

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs**

**RESOLUTION T-17693
May 28, 2020**

RESOLUTION

RESOLUTION T-17693 – Adopts a streamlined Eligible Telecommunications Carrier designation process for the Federal Communication Commission’s Rural Digital Opportunity Fund recipients, with approved operating authority in California only.

SUMMARY

On January 30, 2020, the Federal Communications Commission (FCC) created the Rural Digital Opportunity Fund (RDOF), which will provide up to \$20.4 billion in funding over the next ten years to increase broadband infrastructure to rural areas. All RDOF recipients are required to obtain Eligible Telecommunications Carrier (ETC) designation within 180 days after the FCC identifies, by public notice, the winning bidders, for the service areas in which they are identified as the winning bidders.

This Resolution adopts a streamlined ETC process specifically for recipients of the FCC’s RDOF program by requiring a two-stage application process consistent with the FCC’s short and long-form application processes. This process is applicable only to bidders with existing operating authority in California.¹ Service providers must comply with ETC rules and regulations and are obligated to offer all the services designated for federal universal service support in the service areas for which they receive federal RDOF funding. ETC designation is limited to the RDOF awarded eligible service areas only.

¹ Only carriers with approved Certificate of Public Convenience and Necessity (CPCN) are eligible to apply through the streamlined ETC designation process. Resellers, who not already have facilities-based authority in California must obtain such authority from the CPUC.

BACKGROUND

On May 25, 2016, the FCC implemented a competitive bidding process for the Connect America Fund (CAF) Phase II Auction 903. In this May 2016 *Order*,² the FCC adopted, among other things, a minimum performance tier of 10 megabits per second (Mbps) downstream /1 Mbps upstream with 150 GB of monthly usage, and an annual budget of \$215 million of support over ten years. The FCC Order also requires winning bidders to offer broadband and voice service to all eligible homes and small business in the service area, and establishes a two-step application process, service milestones, performance standards, reporting requirements, non-compliance measures, and forfeiture for defaults (ineligible or unqualified applicants).³

On January 30, 2020, the FCC adopted a Report and Order establishing the RDOF framework to build out broadband infrastructure to connect residential and small businesses in rural areas.⁴ The RDOF program uses procedures and rules that are similar to those which were developed for the CAF Phase II Auction, also known as Auction 903, which was held in 2018. The RDOF program will provide \$20.4 billion over 10 years to increase broadband speeds from 10/1 Mbps to 25/3 Mbps⁵ in rural areas. The RDOF program will provide funding in two phases. Phase I is budgeted for \$16 billion and Phase II is budgeted for \$4.4 billion, with any funds that remain undistributed from Phase I being distributed in addition to the \$4.4 billion budgeted for Phase II.⁶

Consistent with the CAF Phase II Auction 903, winning RDOF bidders will be permitted to obtain ETC designation from the FCC or the respective state commissions after the auction closes.⁷ In January 2019, the CPUC approved two ETC designations for CAF II fund recipients,⁸ and requested that two other applicants seek designation from the FCC.

² See *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, and Rural Broadband Experiments*, Report and Order and FNPRM, WC Dkts. 10-90, 14-58 and 14-259, (FCC 16-64) (rel. May 26, 2016).

³ *Id.*

⁴ See *In the Matter of Rural Digital Opportunity Fund, Connect America Fund*, Report and Order, WC Dkts. 19-126 and 10-90, (FCC 20-5) (rel. Feb. 7, 2020) (*RDOF Order*).

⁵ *Id.*, para. 4.

⁶ *Id.*, para. 8.

⁷ *Id.*, para. 92. Service providers are required to obtain ETC status to qualify for universal service support. See also, 47 U.S.C. §§ 214(e) and 254(e).

⁸ See CPUC Resolution T-17640 for Cal.net and Resolution T-17646 for GeoLinks.

ETC Designation Requirements

To receive federal universal service support, an applicant must be designated as an ETC. Section 254(e) of the Communications Act (the Act),⁹ as amended, states that “only an eligible telecommunications carrier under section 214(e) shall be eligible to receive specific federal universal service support.”¹⁰

The Act delegates to state commissions primary responsibility for designating ETCs in their states. Section 214(e)(2) states that, “[u]pon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission” so long as the requesting carrier meets the requirements of Section 214(e)(1).

Section 214(e)(1) provides that a common carrier designated as an ETC must offer services supported by the federal Universal Service Fund (USF) throughout the designated service area either by using its own facilities, or by employing a combination of its own facilities and resale of another carrier’s services. The ETC also must advertise the services and the related charges using advertising media of general distribution throughout the designated service area. Advertising must include the availability of federal Lifeline services in a manner reasonably designed to reach those likely to qualify for those services.

A carrier seeking an ETC designation must comply with the federal ETC designation requirements and the CPUC’s ETC rules. In Resolution T-17002 (May 25, 2006), the CPUC adopted *The Comprehensive Procedures and Guidelines for ETC Designation and Requirements for ETCs* that are consistent with FCC Universal Service Order ¹¹ regarding designation of a telephone carrier as a qualified ETC. A carrier seeking Federal high-cost support must also comply with Resolution T-17002, Appendix B, Section I and II, and file an advice letter with the CPUC annually.

⁹ Communications Act of 1934, as amended by the Federal Telecommunications Act of 1996, Chapter 5, title 47 of the United States Code (U.S.C.).

¹⁰ 47 C.F.R. §§ 54.400 *et seq.* contains the Federal Communications Commission’s (FCC) Lifeline rules issued to implement § 254 of the Act. Section 54.401 defines Lifeline as a non-transferrable retail service offering for which qualifying low-income consumers pay a reduced charge for voice telephony service after applying the federal Lifeline support amount.

¹¹ See *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Dkt. 96-45 (FCC 97-157) (rel. May 8, 1997).

In addition to complying with the ETC designation rules in Resolution T-17002, carriers requesting ETC designation must also comply with General Order (GO) 153, as well as CPUC User Fee and surcharge obligations. The CPUC User Fee is levied on telephone corporations, including wireless providers, offering services directly to customers. The amount of the fee each carrier must remit is a percentage calculation based on customer billings for all intrastate telecommunications services. In addition, all telephone corporations, including wireless providers and Voice over Internet Protocol (VoIP) providers, are required to collect from their end-users and remit to the CPUC public purpose program surcharges. These surcharges fund the CPUC's universal service programs.

DISCUSSION

Pursuant to the RDOF Order, winning bidders must obtain ETC designations for the geographic areas for which they receive RDOF support.¹² Winning bidders must submit proof of ETC designation to the FCC within 180 days of the public notice identifying winning bidders.¹³

For RDOF recipients, staff proposes a streamlined process for ETC designation requests due to the potential high number of service providers that may request ETC designation pursuant to winning bids in the RDOF. The streamlined process will allow staff to review ETC designations in a more efficient manner and comply with the FCC's 180-day deadline. However, if the designation process takes longer than 180 days, an applicant may seek an extension with the FCC.¹⁴

The FCC's Short-Form/Long-Form Application

The FCC requires interested applicants applying for RDOF to submit a pre-auction short-form application providing the following basic information: applicant's identity, ownership interest, service offering types, financial and technical qualifications, operational history, audited financials, ETC status, spectrum access, and due diligence certification.¹⁵

The FCC's long-form¹⁶ requires applicants to submit more detailed information on: ownership disclosure, financial and technical capability certification, public interest

¹² See *RDOF Order*, at para. 81.

¹³ *Id.*, para. 92.

¹⁴ *Id.*, para. 81 and fn. 230.

¹⁵ *Id.*, paras. 69-85.

¹⁶ *Id.*, paras. 86-113.

obligation certifications, description of technology and system design, available funds certification, ETC eligibility and documentation, forbearance from the service area redefinition process, and letters of credit.

This Resolution addresses how information can be collected from the short and long-form applications to satisfy the Federal ETC eligibility requirements (in areas where information is not available, applicants must separately submit documentation via the CPUC's Advice Letter process)(See Appendix A for a summary of the requirements):

1. *Certification that the applicant offers or intends to offer all services designated for support.* The type of technology to be used to provide service should be shown on the short-form application. To bid on RDOF, applicants must offer broadband and voice services.¹⁷ The FCC requires recipients to file annual FCC Form 481s and section 54.314 certifications.¹⁸
2. *Certification that the applicant offers or intends to offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.* Due to the nature of the RDOF program, recipients must build infrastructure to rural areas over a ten year period or disclose affiliates or partnerships in the short-form application.
3. *A description of the marketing plan of the supported services and charges using media of general distribution.* The FCC does not require submission of the marketing plan with the short or long-form applications. Therefore, the CPUC will collect this information with the application for ETC designation.
4. *A detailed description of the geographic service area for which the applicant requests ETC designation.* RDOF bidders may only bid on areas the FCC deems eligible. Therefore, applicants must submit a list of winning geographic service area(s).
5. *Certify that it will comply with the service requirements applicable to the service it receives.* This requirement will be satisfied by the RDOF program's service milestones, where support recipients must annually file FCC Form 481s and section 54.314 certifications.¹⁹
6. *Submit a five-year service plan (applicable only to high-cost areas).* This requirement will be satisfied by the RDOF program's service milestones, where the FCC will

¹⁷ *RDOF Order*, para. 42.

¹⁸ *Id.*, para. 57.

¹⁹ See 47 C.F.R. §§ 54.313 and 54.314 – Annual reporting requirements for high-cost fund recipients and certification for support for eligible telecommunications carriers.

monitor progress in meeting deployment obligations.²⁰ The FCC waived this requirement for Auction 903 support recipients.^{21 22}

7. *Demonstrate its ability to remain functional in emergency situations.* The CPUC will collect this information when the applicant files for ETC designation.
8. *Demonstrate its ability to satisfy applicable consumer protection and service quality standards.* This requirement will be demonstrated in both of the FCC short-form and long-form applications and satisfied by the RDOF program's specific service quality standards and performance quality requirements.²³ The FCC also waived this requirement for Auction 903 support recipients.
9. *Demonstrate financial and technical capability of providing Lifeline service.* An applicant must certify in the long-form application that it is financially and technically qualified to meet the public interest obligations established for RDOF support.²⁴
10. *A public interest determination.* An applicant must certify in the long-form application that it is financially and technically qualified to meet the public interest obligations established for RDOF support.

Given that the requirements in the FCC's short-form and long-form applications are similar to the information needed to determine federal ETC requests (See Appendix), Staff proposes to modify the ETC process to allow a service provider to submit CPUC a copy of the documentation it submits to the FCC during the short-form and long-form application window. This two-stage process will mirror the FCC's requirements in the short-form and long-form applications.

In order to satisfy the federal ETC requirements, the CPUC will also require service providers to submit additional documentation that is not required by the short and long-form applications. This information includes the following:

1. Submission of proof of the FCC's approval of the long-form application (this may be submitted within a week of approval);
2. Submission of advertisement plan(s) of services with applicable terms and conditions;

²⁰ See *RDOF Order*, paras. 45-55.

²¹ See *WCB Reminds Connect America Fund Phase II Auction Applicants of the process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, (DA 18-714), released July 10, 2018.

²² *RDOF Order*, para. 32. The FCC adopts the same reporting requirements for RDOF as the CAF II auction.

²³ *Id.*, paras. 31-33.

²⁴ *Id.*, paras. 71-72.

3. Submission of a list (in excel format) of census blocks and maps of approved service areas; and
4. A demonstration of the ability to remain functional in emergency situations.

With the information from the short-form application, CPUC staff will begin reviewing the ETC designation requests. Staff may request additional information or clarification of the supporting documents at any time. This modified ETC designation process is contingent on the service provider winning the RDOF award and being deemed eligible to receive support from the FCC and in compliance with all the necessary documentation.

The CPUC will also allow minor corrections, if needed, on short-form applications consistent with the FCC's rules on minor corrections. Note that applicant's filing of required forms and documentation with the CPUC does not guarantee automatic ETC designation. Staff cannot guarantee ETC designations within 180 days if an applicant does not submit its ETC designation request within the same window as the FCC's application window for both the short and long-form applications. There may be a delay in processing ETC designation requests before the FCC's deadline. ETC designation is limited to the eligible service areas in California that are awarded RDOF funds.

Summary of the modified ETC process

1. RDOF applicants may submit a copy of the FCC's short-form, as an information only Tier I Advice Letter, to the CPUC during the FCC's application window. At the same time or thereafter, applicants may also submit the additional documentation needed for the federal ETC designation requirements, in a Tier III Advice Letter filing. This filing must be made prior to the filing of the RDOF's long-form.
2. Once the FCC announces the winning bidders, applicants can submit a copy of the FCC's long-form to the CPUC. Documentation must be submitted during the FCC's application window.²⁵
3. Upon receiving the required information, the CPUC's Communications Division staff intends to propose one resolution adopting all eligible and compliant ETC designation requests from all winning bidders before the FCC's 180-day

²⁵ See <https://www.fcc.gov/implementing-rural-digital-opportunity-fund-rdof-auction> for the FCC's application window (last visited 4/21/2020).

deadline. Staff may propose additional ETC resolutions for applicants that receive an extension from the FCC.

4. RDOF applicants may electronically file their ETC requests via the Advice Letter process.²⁶

If applicants encounter technical difficulties and cannot file electronically, please send a hard copy to:

California Public Utilities Commission
Communications Division – ETC group
505 Van Ness Avenue
San Francisco, CA 94102

Additional information on ETC designation requests for RDOF applicants will be published on CPUC's website: www.cpuc.ca.gov

CONCLUSION

The Commission finds that the proposed process in this Resolution is reasonable given the efficiency of the shortened process, and therefore adopt the procedures specified in this Resolution.

COMMENTS

Public Utilities Code section 311(g)(1) requires that a draft resolution be served to all parties on the Eligible Telecommunications Carrier and California Advanced Services Fund service lists and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. On April 24, 2020, a draft of this resolution was distributed for comment to the utilities and other interested parties.

On May 18, 2020, The Utility Reform Network (TURN) filed comments on Draft Resolution T-17693.

TURN recommends that the Commission include clarifications to the Draft Resolution such as, timing for submission of applications, a process where staff can request additional information from applicants and allow more than one resolution for approving ETC applications for RDOF recipients. In response to TURN's comments,

²⁶ See <https://www.cpuc.ca.gov/General.aspx?id=1097> (last visited 4/21/2020).

staff notes that it is not necessary to incorporate additional findings of fact (FOF X),²⁷ as the right to protest and suspend are general Advice Letter rules.²⁸ Accordingly, staff updated the Draft Resolution to incorporate other suggestions offered by TURN.

FINDINGS

1. On May 25, 2016, the Federal Communications Commission implemented a competitive bidding process for the Connect America Phase II Auction 903.
2. On January 30, 2020, the FCC adopted the framework for the Rural Digital Opportunity Fund with a budget of \$20.4 billion over ten years to build out broadband infrastructure to connect residential and small businesses in rural areas.
3. Consistent with the Connect America Fund Phase II Auction 903, winning bidders of RDOF will be permitted to obtain Eligible Telecommunication Carrier designation from the respective state Commissions after the close of the auction.
4. Service providers must submit proof of ETC designation to the FCC within 180 days of the Public Notice identifying winner bidders.
5. In 2019, the California Public Utilities Commission designated two service providers ETC designation within the 180-day deadline.
6. For RDOF recipients, staff proposes a streamlined process for ETC designation requests due to the potentially high number of service providers that may request ETC designation pursuant to winning bids in the RDOF.
7. The FCC requires interested applicants applying for RFOF to submit a pre-auction short-form application that provides basic information.
8. The FCC's long-form application requires more detailed information than the short-form application.
9. Communications Division Staff proposes to modify the ETC process to allow service providers to submit the same documentation it submits to the FCC with copies to the CPUC, both the short-form and long-form applications and corresponding FCC approval of the applications. Staff may request the service provider to submit additional or clarification regarding the service providers' documents at any time.
10. The California Public Utilities Commission will still require service providers to submit California specific information.

²⁷ See TURN's Comments (5/18/20) at 3.

²⁸ See General Order 96-B at <https://www.cpuc.ca.gov/generalorders/>

11. Upon receiving the required information, Communications Division Staff intends to propose one resolution adopting all eligible and compliant ETC designation requests from all eligible service providers before the FCC's 180-day deadline, but may propose additional resolutions adopting eligible and compliant ETC designations after the FCC's 180-day deadline as needed.
12. On April 24, 2020, the Commission emailed a draft of this resolution to the Eligible Telecommunications Carrier and California Advanced Services Fund service lists for public comment.

THEREFORE, IT IS ORDERED that:

1. The California Public Utilities Commission authorizes the Communications Division to implement a streamlined ETC designation process for the Federal Communications Commission's Rural Digital Opportunity Fund, Auction 904 recipients only.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorable thereon:

Alice Stebbins
Executive Director

Appendix A

Summary of Federal and State ETC, and FCC's RDOF requirements^{29 30}

Federal ETC requirements for high cost and Lifeline	RDOF Short-Form requirements	RDOF Long-Form requirements	State ETC requirements
1. Certification that the applicant offers or intends to offer all services designated for support	Type of technology that will be used to provide each service for each bid		A statement of commitment to provide service
2. Certification that the applicant offers or intends to offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.	RDOF program requires infrastructure buildout and disclosure of ownership, affiliates or partnerships.	Updated ownership information	A description of the proposed service offerings and attached service area maps
3. A description of the marketing plan of the supported services and charges using media of general distribution.			A description of the advertising plan(s)
4. A detailed description of the geographic service area for which the applicant requests ETC designation			A description of the proposed service offerings and attached service area maps
5. Certify that it will comply with the service requirements applicable to the support that it receives.		RDOF program milestones.	A statement that funding will only be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

²⁹ See 47 C.F.R. §§ 54.201 and 54.202.

³⁰ See CPUC Resolution T-17002.

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6. Submit a five-year service plan (applicable only to high cost areas)		Waived – see #8, reporting obligations.	Submit a 2-year service quality improvement plan
7. Demonstrate its ability to remain functional in emergency situations			Demonstrate its ability to remain functional in emergency situations
8. Demonstrate its ability to satisfy applicable consumer protection and service quality standards.		RDOF requires specific service quality standards and reporting obligations.	A statement of commitment to consumer protection
9. Demonstrate financial and technical capability of providing Lifeline service.	Technical and financial certifications qualifications	Technical and financial certifications qualifications in the areas applicant won support	
10. Public interest determination	Technical and financial certifications qualifications	Technical and financial certifications qualifications in the areas applicant won support	Public interest determination

(End of Appendix A)